

Plain English Guidelines to Information Privacy Principles 1 - 3

Advice to agencies about collecting personal information

Privacy Commissioner, October 1994

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Introduction to these guidelines

These guidelines are the Privacy Commissioner's view of how the Information Privacy Principles (IPPs) 1-3 in the Privacy Act affect federal government **agencies**. IPPs 1-3 are concerned with how government **agencies** collect **personal information**. These guidelines are not legally binding. They only describe how the law works.

This is the first set of guidelines in a series to be published by the Privacy Commissioner.

What do the IPPS do?

There are eleven IPPs in the Privacy Act. Most federal government **agencies** that handle information about people must follow these IPPs.

The IPPs do these things:

- they regulate the way government **agencies** collect, store, use and disclose information about people;
- they allow people access to information **agencies** keep about them; and
- they allow people to request changes to this information.

How to use these guidelines

- 1 Use the quick reference guide to see which Information Privacy Principles apply to your collection
- 2 Use the table of contents to help you find guidelines on topics that might be relevant
- 3 **Some of the words used in these guidelines have special meanings. Use the "Meanings of words" section to help explain words.**

Which Information Privacy Principles apply to me?

More than one Privacy Principle, and more than one guideline, may be relevant to your collection.

You should read ALL the guidelines that apply to your collection to make sure you have found all the relevant information.

Where do I get more information?

If you have any questions about the IPPs you can telephone the Privacy Commissioner's office toll-free on: **the Privacy Hotline - 1300 363 992**

When do IPPs 1 - 3 apply?

IPPs 1-3 apply when an **agency** collects **personal information** and intends to:

- include the information in its records (in the form of documents, databases, audio tapes or pictures); or
- publish the information in a generally available publication.

Even if they do not intend to record or publish the information, **agencies** must not collect it unfairly or unlawfully. (see IPP 1.2)

Which IPPs apply to collecting personal information?

IPPs 1-3 only apply if an **agency** is collecting **personal information**. Which parts of IPPs 1-3 apply depends on how the **agency** collects the personal information.

There are three ways in which an **agency** can collect information about a person for including it in its records, or in a generally available publication:

- 1 someone gives information to the **agency** about the person without the **agency asking for it**. (IPP 1 applies)
- 2 the **agency asks** someone else (for example, another **agency**) for information about the person. (IPPs 1 and 3 apply)
- 3 the **agency** directly **asks** a person for information about himself or herself (for example, it asks the person to fill in a form). (IPPs 1, 2, and 3 apply)

Text and summary of IPPs 1-3 as set out in the Privacy Act

Text of IPP 1

- 1 **Personal information** shall not be collected by a collector for inclusion in a record or in a generally available publication unless:
 - a) the information is collected for a purpose that is a lawful purpose directly related to a function or activity of the collector; and
 - b) the collection of the information is necessary for or directly related to that purpose.
- 2 **Personal information** shall not be collected by a collector by unlawful or unfair means.

Summary of IPP 1

IPP 1 says that **agencies** can only collect **personal information**:

- for a lawful purpose that is directly related to their functions; and
- if collecting the information is necessary for or directly related to that purpose.

Agencies must not collect **personal information** unlawfully or unfairly.

Text of IPP 2

Where :

- a) a collector collects **personal information** for inclusion in a record or in a generally available publication; and
- b) the information is solicited by the collector from the individual concerned;

the collector shall take such steps (if any) as are, in the circumstances, reasonable to ensure that, before the information is collected or, if that is not practicable as soon as practicable after the information is collected, the individual concerned is generally aware of:

- c) the purpose for which the information is being collected;
- d) if the collection of the information is authorised or required by or under law - the fact that the collection of the information is so authorised or required; and
- e) any person to whom, or any body or **agency** to which, it is the collector's usual practice to disclose **personal information** of the kind collected; and (if known by the collector) any person to whom, or any body or **agency** to which, it is the usual practice of that first mentioned person, body or **agency** to pass on that information.

Summary of IPP 2

IPP 2 says that if an **agency** asks a person **for personal information** about himself or herself, it must normally tell the person:

- why it is collecting the information
- whether it has legal authority to collect the information; and
- who it usually gives that sort of information to.

Text of IPP 3

Where:

- a) a collector collects **personal information** for inclusion in a record or in a generally available publication; and
- b) the information is solicited by the collector;

the collector shall take such steps (if any) as are, in the circumstances, reasonable to ensure that, having regard to the purpose for which the information is collected:

- (c) the information collected is relevant to that purpose and is up to date and complete; and
- (d) the collection of the information does not intrude to an unreasonable extent upon the personal affairs of the individual concerned.

Summary of IPP 3

IPP 3 says that when an **agency asks for personal information**, the **agency** must do its best to make sure that the information is:

- relevant to the **agency's** reason for collecting it;
- up to date; and
- complete

It also says that when an **agency** gets **personal information** from people, it must do its best not intrude unreasonably on their personal affairs.

Meanings of words

The meanings used here are based on the definitions in section 6 of the Privacy Act.

Agency

Agencies are generally federal government organisations. These organisations include:

- federal government departments
- bodies and tribunals set up for a public purpose by federal government laws.

State and local government organisations are not "*agencies*".

Some types of organisations, even if set up by federal government laws, are not "*agencies*". These include:

- incorporated companies
- incorporated societies; and
- incorporated associations.

The IPPs legally bind most *agencies*.

"Asking for" information

An *agency asks for* (or 'solicits') *personal information* if it encourages other organisations or people to give it particular information. This includes:

- *asking* directly for the information. For example, asking for information on a form
- arranging for an organisation or a person to give it *personal information* regularly; or
- encouraging people to give it information (for example, by setting up a hotline).

Generally available publication

Generally available publications include things like magazines, books, newspapers, annual reports, the Government Gazette and public databases like the Electoral Roll.

Personal information

The Privacy Act (and these guidelines) only cover *personal information*. This is information or opinions that can identify a living person.

A record

A *record* is a:

- document
- database
- a photograph or picture of people.

The Privacy Act lists a number of exceptions to this definition. For example, *generally available publications* are not "*records*".

Information Privacy Principle 1

What are the guidelines on IPP 1?

- Guideline 1** gives the text of IPP 1
- Guideline 2** defines the "purpose of collection"
- Guideline 3** defines "necessary for or directly related to"
- Guideline 4** describes some practices which may breach IPP 1.1
- Guideline 5** describes when a collection is against the law
- Guideline 6** tells you what collecting in an unfair way is
- Guideline 7** tells you how you can avoid collecting unfairly
- Guideline 8** briefly discusses secret optical surveillance

1. What does IPP 1 say?

The text of IPP 1 is:

- 1) **Personal information** shall not be collected by a collector for inclusion in a record or in a generally available publication unless:
 - a) the information is collected for a purpose that is a lawful purpose directly related to a function or activity of the collector; and
 - b) the collection of the information is necessary for or directly related to that purpose.
- 2) **Personal information** shall not be collected by a collector by unlawful or unfair means.

Meaning of IPP 1

IPP 1 sets up general principles for **agencies** collecting **personal information**. Collection should be relevant, lawful and fair.

IPP 1.1 says that **agencies** can only collect information that is:

- for a lawful purpose directly related to their functions; and
- necessary for or directly related to that purpose.

IPP 1.2 says that an **agency** must not collect **personal information** in a way that is unlawful or unfair.

2. What is the purpose of collection?

When working out the purpose of collecting **personal information**, an **agency** should consider:

- why it collects the information;
- what its role is in relation to the person who the information was about; and
- what a reasonable person would think its reason for collecting the information was.

To protect people, the Privacy Commissioner usually interprets the purpose of collection narrowly.

For example: The Privacy Commissioner normally does not accept the view that an **agency** collects **personal information** just to administer an **agency** or a set of laws. The purpose of collection should be more specific than this and it should relate to the current reason for collecting the information.

Some purposes that the Privacy Commissioner would accept are:

- allowing the **agency** to give someone a particular benefit or service; or
- helping the **agency** to run a particular government program.

Note, however, that an **agency** can only collect Tax File Numbers for limited purposes. Guideline 4 tells you what these purposes are.

3. When is collecting personal information necessary for or directly related to the purpose of collection?

Collecting **personal information** is only necessary for or directly related to the purpose of collection if the information directly helps to achieve that purpose. Guideline 2 looks at what is meant by "purpose of collection".

Agencies should have a clear purpose for collecting each piece of **personal information**. They should work this purpose out before collecting the information. Collecting information just because it may be useful in the future is generally not acceptable.

Note that an **agency** can only collect Tax File Numbers for limited purposes. Guideline 4 tells you what these purposes are.

4. Practices that may breach IPP 1.1

The following practices may breach IPP 1.1.

Asking for irrelevant information

If an **agency asks for** background information which it doesn't have any particular use for, the **agency is asking for** irrelevant information.

Some examples of getting irrelevant **personal information** are:

- collecting information about a whole group of people when information is only needed about some people in the group;

For example: An **agency** cannot ask all new employees for information relevant to security clearances when not all new employees need a security clearance.

- collecting a broad range of information when only some information is relevant.

For example: An **agency** needs to know information about a person's income to work out whether he or she can get a benefit. The **agency** does not need other financial information (such as information about assets). The **agency** should ask only for the information it needs, rather than asking the person to give information about all his or her finances.

What if using information is against the law?

An **agency** may not collect **personal information** for a purpose, if the law says it cannot use that information for that purpose.

For example: The Spent Convictions Scheme prevents some types of old convictions from being considered by **agencies**. Therefore, **agencies** should not try to collect information about those convictions.

Are there any exceptions?

An **agency** can collect general intelligence information if:

- collecting intelligence information is an important part of its job and collecting the information will help it to do that part of its job; or
- if the law specifically authorises it to collect the information.

Very few **agencies** have the job of collecting general intelligence. Examples of **agencies** which do collect general intelligence are the Australian Federal Police and the Australian Transaction Reports and Analysis Centre.

Some **agencies** have specific legal powers which allow them to collect information about groups of people, even if they do not need the information about each person in the group.

What should an agency do to avoid asking irrelevant questions?

- **Agencies** should check forms and interview questions and work out how they are necessary for, or directly related to, the purpose of collection.
- **Agencies** should generally only **ask for** information about relevant people - they should not **ask for** information about a whole group of people if they only need information about some members of the group.
- **Agencies** should clearly tell their interviewers about IPPs 1-3, and the range of questions they can ask. **Agencies** can use training and instructions to do this.

Unnecessarily recording a person's identity

Agencies should only record information in a way that identifies people if they need to.

For example: An **agency** is surveying people who used to receive a government benefit. The **agency** only needs figures about how many people now have different jobs. The **agency** should not record the names or other identifying details about the people.

Unnecessary recording of information

Sometimes, **agency** staff get **personal information** that is not necessary for or related to any purpose of the **agency**. This includes:

- when people send information to the **agency** without the **agency asking for** it; or
- when an **agency asks for** some information, but people give it more information than it asked for.

As soon as practical after it receives **personal information**, an **agency** should decide whether it is relevant to what the **agency** does. If information is not relevant, the **agency** should not keep it in its records.

For example: An **agency** needs limited information from a person's passport, and asks to see the passport to confirm the person's identity. If the **agency** makes and keeps a copy of the whole passport, it may be in breach of IPP 1.

What should agencies do to avoid unnecessary collection of personal information?

Instead of keeping full copies of documents that people give it, an **agency** should think about:

- noting the information needed from a document, then returning the document;
- blanking out irrelevant parts of the document when copying it; or
- if using a document to identify someone, officers could note that they have seen the document, rather than keep a copy.

If an **agency** often receives information it does not need and which it has not asked for, the **agency** should try to stop this happening.

For example: An **agency** often asks doctors for limited medical information about people. Doctors often give the **agency** extra information which it does not need. The **agency** should make sure it explains exactly what information it wants, and tell doctors not to give extra information that the **agency** has not asked for.

What is the rule about Tax File Numbers?

There are special rules about collecting Tax File Numbers (TFNs). An **agency** can only collect TFNs:

- to help it administer tax laws; or
- for some special purposes under assistance **agency** law.

If someone gives an **agency** a document with a TFN on it for some other purpose, the **agency** must allow the person to remove the TFN. If the person does not remove the TFN, the **agency** must remove the TFN before adding the document to its records.

For more information on TFNs, see the Privacy Commissioner's Tax File Number Guidelines in the Federal Privacy Handbook.

5. What collections are against the law?

IPP 1.2 says that no-one can collect **personal information** in illegal ways. Collecting **personal information** could be illegal if:

- an **agency** commits a criminal offence under State or Federal law by collecting it; or
- an **agency** could be sued for something it does in collecting it (for example, for trespass).

For example: If the law does not specifically allow the following collections, they might be against the law:

- intercepting telephone calls and using listening devices;
- collecting details by trespassing onto property; or
- interfering with mail.

It may also be illegal if an **agency** collects information that it does not have the power to collect under the laws that let it collect.

6. What is collecting in an unfair way?

IPP 1.2 says that no-one can collect **personal information** in ways that are unfair.

It is difficult to define unfairness. Below are some examples of collection practices that may be unfair because they involve:

- tricking the **person** giving the information; or
- using too much pressure.

Tricking or misleading the person giving the information

An **agency** is likely to breach IPP 1.2 if it tricks or misleads the person from whom it collects **personal information**. In particular, the **agency** is likely to breach IPP 1.2 if, because of its collection practice, the **agency** gets information that the person would not otherwise have given to it.

Here are some examples of these collection practices. Some of these collection practices could also be against the law.

Misleading people about who is collecting the information

It may be unfair for an **agency** to mislead people about who is collecting **personal information**, or why the information is being collected.

For example: An **agency** representative **asks** a third party for information about a person. The representative does not say that he or she works for the **agency**, but pretends to be a friend or colleague of that person.

When an **agency** collects **personal information** from a third party, the **agency** should be careful about what it tells the third party to avoid giving information away. However, **agency** staff should usually say what **agency** they are from.

Misleading people about the confidentiality of information

It may be unfair for **agencies** collecting **personal information**:

- to tell people that they will keep the information confidential if they will not; or
- to mislead people about who they might give the information to.

Agencies should not tell people that **personal information** will be kept confidential if they sometimes give the information to others.

Misleading people about the benefits they get for giving information

It may be unfair for an **agency** to mislead people about benefits they will get for **giving personal information**.

For example: An **agency** places newspaper ads asking for certain people to contact it. It states wrongly that people who answer the ad will learn something to their advantage.

Making false claims about the consequences of not giving information

It may be unfair for an **agency** to try to collect **personal information** by misleading people about things that will happen to them if they don't give the information.

For example:

- An **agency** tells a person that he or she may be prosecuted if they do not give certain information, when the person could not be prosecuted.
- An **agency** says on a form that a person has to give certain information to get a benefit; but does not say that some people do not have to give the information in certain circumstances.

Collecting voluntary information as if it was compulsory

It may be unfair for an **agency** collecting **personal information** from people to tell them they have to give the information when they do not have to.

For example:

- An **agency** conducts a survey. Taking part in the survey is voluntary, but the **agency** tells a person that the law says they have to take part.
- An **agency** gives a person a form to fill in. The person has to answer some of the questions, but the rest are voluntary. The form does not make this distinction. It says: The law says you have to give information required by this form; but does not say this does not apply to all the information asked for.

Using too much pressure

It may be unfair for an **agency** to use too much pressure on a person or organisation when it **asks for personal information**, especially if this reduces someone's choice of what information to give.

Some examples of practices which could use too much pressure are:

- visiting people's homes at unreasonable hours;
- asking a person many times for details;
- interviewers insulting or intimidating people;
- **asking for** information in ways that might unnecessarily embarrass a person.

IPP 3 prevents collecting **personal information** in an unreasonably intrusive way. Guideline 21 tells you how an **agency** can avoid collecting information in an intrusive way.

7. How to avoid collecting unfairly

There are several things **agencies** could do to avoid unfair collection.

Giving people full information about the collection

Collectors should tell the person giving the **personal information**:

- who is collecting the information (if this is not obvious from the circumstances);
- why they are collecting the information (so long as this does not involve mentioning information about someone else illegally);
- whether the information is likely to be passed on to others; and
- what things might happen (good or bad) if the person does or does not give the information.

Agencies can avoid misunderstandings if they clearly tell a person these things.

If a form **asks for** information that the person must give, and also information that the person does not have to give, it may be useful to put voluntary and compulsory information in separate parts of the form.

Do not put too much pressure on people

Agencies should collect **personal information** in a way that does not put undue pressure on the person giving the information. See also Guideline 22 about how IPP 1.2 applies to law enforcement organisations when they collect information. When an **agency** interviews someone, it should try to tell the person about the interview in advance and conduct it in a private place.

8. Using secret visual surveillance like videos, camera etc

Using secret visual surveillance is a great intrusion on the privacy of the people being watched.

The Privacy Commissioner has issued voluntary guidelines for The Conduct of Covert Optical Surveillance in Commonwealth Administration. **Agencies** which use secret visual surveillance should refer to the guidelines in the Federal Privacy Handbook.

What is in the guidelines about secret visual surveillance?

The guidelines about covert surveillance:

- suggest procedures for **agencies** to use when they conduct secret visual surveillance; and
- recommend specific procedures for **agencies** to use when using surveillance on people claiming compensation.

The procedures in the guidelines about covert surveillance are designed to make sure that:

- only relevant **personal information** is recorded; and
- the method of collection is not against the law or unfair.

They also cover other relevant requirements of the IPPs, including those about security of **personal information**, and using and disclosing **personal information**.

The guidelines are not meant for law enforcement or security organisations, because they have their own strict internal instructions on using surveillance.

Information Privacy Principle 2

What are the guidelines on IPP 2?

- Guideline 9** gives the text of IPP 2
- Guideline 10** explains the circumstances where you have to give people an IPP 2 notice
- Guideline 11** tells you at what time you have to notify people
- Guideline 12** sets out what should be in an IPP 2 notice
- Guideline 13** tells you about third parties
- Guideline 14** tells you what form the notification takes
- Guideline 15** says what an **agency** should do to make sure staff comply with IPP 2
- Guideline 16** gives some sample IPP 2 notices

9. What does IPP 2 say?

This is the text of IPP 2.

Where :

- a collector collects **personal information** for inclusion in a record or in a generally available publication; and
- the information is solicited by the collector from the individual concerned;

the collector shall take such steps (if any) as are, in the circumstances, reasonable to ensure that, before the information is collected or, if that is not practicable as soon as practicable after the information is collected, the individual concerned is generally aware of:

- the purpose for which the information is being collected;
- if the collection of the information is authorised or required by or under law - the fact that the collection of the information is so authorised or required; and

- e) any person to whom, or any body or **agency** to which, it is the collector's usual practice to disclose **personal information** of the kind collected; and (if known by the collector) any person to whom, or any body or **agency** to which, it is the usual practice of that first mentioned person, body or **agency** to pass on that information.

10. In what circumstances does an agency have to notify a person?

When an **agency asks for personal information** directly from the person who that information is about, it has to take whatever steps are reasonable to make sure the person is aware of these details:

- why the **agency** is collecting the information
- the **agency's** legal authority (if any) to collect the information; and
- to whom the **agency** usually gives that kind of information.

These details are explained in Guideline 12.

To make sure a person is generally aware of the details, the **agency** needs to ensure that:

- the details are given to the person, unless the **agency** has good reason to believe that the person already knows them;
- the details are given in a way that the person can understand; and
- the person can easily find the details.

In almost all cases the **agency** will have to give the details to the person.

If an **agency** collects **personal information** without giving the IPP 2 details, the **agency** must have a good reason for considering that:

- it could not reasonably be expected to give the details; or
- it does not need to give the person the details.

Are there any exceptions?

An **agency** does not have to give details if giving the details would defeat the purpose of collecting the **personal information**.

It is unlikely that:

- the practical difficulty; or
- the cost;

of giving the details required by IPP 2 are good enough reasons for not giving the details.

If these problems arise, the **agency** should instead try the following:

- change the way in which the details are given; or
- if it cannot be avoided, give the details at another time.

See Guideline 14 for a list of ways an **agency** can give people the details.

11. When does an agency have to notify a person?

If an **agency** can take reasonable steps to make sure that a person is aware of the matters set out in IPP 2, then the **agency** must take those steps before collecting **personal information** from that person, or as soon as practicable afterwards. For example, as a general rule, all forms which are used to collect **personal information** should include an IPP 2 notice.

The **agency** should provide the IPP 2 details as early as possible for each request for **personal information** it makes. Because the **agency** has to communicate with the person concerned to collect information, there is usually a suitable chance to give the details.

See Guideline 14 for a list of ways an **agency** can give people details.

Can an agency give the details after collecting the information?

An **agency** should only put off giving IPP 2 details if there are practical problems in giving the details before collecting the information that the **agency** cannot overcome by any reasonable means.

If this happens, the **agency** must take steps to give the IPP 2 details as soon as it can after collecting the information.

12. General contents of IPP 2 notices

IPP 2 notices have to contain information about:

- why the **agency** is collecting the information;
- the **agency's** legal authority (if any) to collect the information; and
- to whom the **agency** usually gives that kind of information.

Agencies should write IPP 2 notices according to each particular collection of **personal information**. It is usually not suitable for an **agency** to use the same IPP 2 notice for all collections of information directly from a person. Usually, what is in the IPP 2 notice should vary depending on what sort of information is collected, why it is collected, and to whom it is usually given.

What to include in an IPP 2 notice

The following sections set out what to include in IPP 2 notices. Examples of IPP 2 notices are given in Guideline 16.

IPP 2(c): Why the agency is collecting the personal information

Does an agency only have to tell a person the main reason for collecting the information?

Normally, the purpose of collection depends on the reason the **agency** is collecting the **personal information** at the time it collects the information. However, sometimes the **agency** knows the information will also be used for other purposes. If so, the **agency** should normally tell the person about the other uses when it collects the information.

Can the title of the form be enough to give the purpose?

If an **agency** uses a title on its forms that reasonably explains the purpose of collection, it does not have to give any more details about its purpose (though it would still have to give the other details mentioned in IPP 2).

However, the **agency** cannot later argue that the collection had a wider purpose than the title suggests.

Titles on forms should not be misleading.

Can the information be used for other purposes?

Under IPP 10, **agencies** are not allowed to use information for purposes other than the purpose for which they collected the information, unless certain exceptions apply.

IPP 2(d): The agency's legal authority to collect the personal information

An IPP 2 notice should refer to each provision of legislation which:

- requires an **agency** to collect the **personal information**; or
- specifically authorises an **agency** to collect the information.

If legislation does not refer to a specific power, but only gives the **agency** a general function which includes collecting **personal information**, the IPP 2 notice should still refer to the legislation.

IPP 2(e): Who the agency usually gives the kind of personal information collected to

An **agency** should try to give a person it collects **personal information** from a full and clear picture of whom the information is likely to be given to.

IPP 2(e) says that when an **agency asks** a person for **personal information**, it must normally tell that person about any third parties which it usually discloses that kind of information to.

Guideline 13 explains when information is "usually disclosed" to a third party, and how specifically third parties must be identified.

Also, if the **agency** knows that any of these third parties usually gives the **personal information** to other parties, it should normally tell the person this.

If only some information is usually given to a third party, what should the IPP 2 notice say?

If only some of the **personal information** collected is usually given to a third party, the IPP 2 notice should, if practical, show what information is given. This can be expressed generally.

For example: An IPP 2 notice might say that Identifying information collected on this form is usually given to the Department of ... This would cover information such as name, address, telephone number, date of birth and so on.

Does an agency have to find out to whom third parties give information?

Where an **agency** gives a third party **personal information**, it does not have to actively do anything to find out who those third parties usually give that information to.

But if the **agency** knows who the third party usually gives the **personal information** to, it must do what is reasonable to make sure the person it collects the information from knows this. Normally, this means that any IPP 2 notice should say who the third party gives the information to.

Does the IPP 2 notice affect giving information to others?

What an **agency** says about its usual disclosure practices in its IPP 2 notice when it collects the information can affect whether the **agency** can later give the information to others.

IPP 11.1(a) says that an **agency** can give information about a person to a third party if that person is reasonably likely to be aware, or to have been made aware under IPP 2, that the relevant information would usually be given to that third party.

If an **agency** tells a person when it collects **personal information** that it usually gives such information to a particular person or body, IPP 11.1(a) allows it to give the details to the person or body. But if the **agency** does not tell the person this, it may not be allowed to give the information unless the conditions in IPP 11.1 are met in another way.

See also Guideline 13 below ("Giving information to third parties").

13. Giving personal information to third parties

Information is usually given to another party by an **agency** if the **agency** has a regular arrangement to give information to that party.

<i>Giving information to a third party</i>	
<p>This includes</p> <ul style="list-style-type: none"> • a regular arrangement to give all of some type of personal information to a third party • giving only a small amount of information under a set arrangement, if the possibility of giving the information could be reasonably predicted when the agency collected the information 	<p>This does not include:</p> <ul style="list-style-type: none"> • giving information only in exceptional cases; or • giving information in cases that could not be reasonably predicted when the agency collected the information. <p>For example: giving information to the police in response to a search warrant, or a court in response to a subpoena would not normally be considered as case where information is usually given.</p>

How specifically does an agency have to identify third parties?

If possible, an **agency** should name each individual person or body to which it usually gives **personal information**. But if an **agency** can give information to a large number of third parties, naming all of them could make the notice given to a person too long or unclear to be of help.

Guideline 12 tells you what an **agency** has to do to find out whom third parties give information to.

Suggestions

- **Agencies** should generally name all federal organisations which they usually give **personal information** to.
- Generally, **agencies** should name other parties which they usually give **personal information** to. However, if an **agency** usually gives **personal information** to a group of organisations that do similar jobs (for example, State police forces), the **agency** can name the group rather than listing its individual members. It is recommended, however, that the notice show why the information is given (at least, in broad terms). This helps a person giving information to work out the specific member or members of the group to which the **agency** is likely to give the information.

For example: If a person is told that information is usually given to educational institutions, and is aware of why the information is given, the person can probably work out what the relevant educational institution is in his or her case.

- If it is impractical to put the names of all the third parties that the **agency** gives information to on the form, the **agency** could give a leaflet with the form containing the IPP 2 notice. Guideline 14 tells you how to do this.

14. Form of Notice

What form does an agency have to give the notice in?

There is no particular form for an IPP 2 notice. An **agency** can give the notice in any way as long as it makes the person aware of the relevant details.

The most suitable way to give the IPP 2 notice depends on:

- how the information is collected; and
- how many details the **agency** has to give the person.

The sections below give some comments on several ways that **agencies** have given IPP 2 notices in the past.

Notices on forms

If the **agency** collects **personal information** by asking the person to fill in a form, the IPP 2 notice can be printed on the form. This is usually the best way of giving IPP 2 details when an **agency** uses a form to collect **personal information**.

Recommendations

The notice should not be hard to find or read. This means it should not be:

- away from the area that the person fills in; or
- in smaller type that is difficult to read.

Leaflet given with the form

If the **agency** cannot easily include the whole IPP 2 notice on a form, the **agency** can put it in a leaflet given to the person with the form.

Recommendations

- The **agency** should give the leaflet to people with the form. It is not normally acceptable to give the leaflet to people only if they ask for it.
- The form should include as many of the IPP 2 details as possible
- The form should refer the person to the notice in the leaflet, and say that the leaflet is about privacy.
- An **agency** can include notices for more than one form in any leaflet.

Giving a written notice at interview

If the **agency** collects the **personal information** at an interview, the **agency** can give the person a written IPP 2 notice at the interview.

Recommendations

- The **agency** should give the person the notice at the start of the interview.
- The interviewer should explain to the person what is in the notice; and can ask the person to read the notice before continuing with the interview.
- The interviewer should try to answer any questions the person has about the notice before the interview continues.

Telling people orally

Sometimes the most practical way of giving people IPP 2 notices is to tell them orally; for example, if the **agency** is collecting **personal information** from a person over the telephone.

Recommendations

- The words that the interviewer uses to give the IPP 2 notice should be written down and included in staff instructions.
- The interviewer should give the person the IPP 2 notice before starting the interview.
- The interviewer should take care to explain the notice clearly.
- The interviewer should ask the person if they have understood the notice, and if they would like any part of the notice repeated.
- If possible, the **agency** should also send the person the notice in written form.

15. How to make sure staff follow IPP 2

Agencies must make sure their staff comply with IPP 2. Some ways that **agencies** can do this are:

- Training staff who design forms in privacy requirements.
- Referring new forms for **personal information** collection to staff who deal with privacy matters. These staff can make sure suitable IPP 2 notices are included if needed.

- Including detailed instructions on complying with IPP 2 in manuals for staff who collect **personal information** through interviews. Where IPP 2 notices are given orally, the **agency** should give staff the exact text of the IPP 2 notice in writing.
- Including details about IPP 2 in training programs, especially for staff whose jobs include collecting **personal information** direct from the subject.

Should an agency review IPP 2 notices?

An **agency** should review IPP 2 notices whenever it reviews the forms that contain them, to make sure the notices are still adequate and accurate.

If an **agency** revises manuals or other documents telling staff about how to give IPP 2 notices (including oral notices), the **agency** should check that the instructions are still adequate and accurate.

If an IPP 2 notice on a form becomes inaccurate (for example, because an **agency** changes its disclosure practices), it may be reasonable for the **agency** to use up its existing stocks of the form, as long as the IPP 2 notice is not seriously misleading. The IPP 2 notice should of course be updated when the form is reprinted.

If the **agency** does not intend to reprint the form in the near future, it should consider making the form accurate (for example, by making a stick-on label to attach to the form with an accurate IPP 2 notice on it).

16. Examples of IPP 2 notices

Agencies do not have to use any particular wording for IPP 2 notices. This section gives some suggestions about how **agencies** can write IPP 2 notices, and gives some models that **agencies** can use if they wish.

Basic IPP 2 notices

A suggested wording for simple IPP 2 notices is:

[Name of **agency**] is collecting the information on this form to [statement of purpose]. This is [authorised/required] by [provision/name of Act].

[Name of **agency**] usually gives some or all of this information to [names of recipients].

The decision whether to use "authorised" or "required" in the second line of this wording would depend on whether the law requires, or merely permits, the **agency** to collect the **personal information**. "Required" is only appropriate in the rare case where the **agency** has no choice in whether or not it collects the information.

The following are sample IPP 2 notices using the basic wording:

Example 1: Grant application

The Federal Grants Board is collecting the information on this form to work out the amount of assistance you can get under the grants program. This is authorised by section 21 of the Grants Program Act 1992.

The Federal Grants Board usually gives identifying information from this form to State Government organisations which run grants programs.

Example 2: Health Survey Form

The Bureau of Health Research is collecting the information on this form to conduct research into public health. This is authorised by the Health Services Act 1990.

The Bureau of Health Research usually gives some or all of this information to the Commonwealth Department of Health.

More complex IPP 2 notices

Sometimes an **agency** has to give a longer or more complicated IPP 2 notice - for example, because:

- the **agency** has more than one purpose for collecting **personal information**;
- it gives the **personal information** to a lot of other parties; or
- it may know that some of the parties it gives **personal information** to pass that information on to further bodies.

The following are two examples of more complex IPP 2 notices. They follow the suggested format for simple notices, but include extra details.

Example 3: Benefit application

The Department of Social Security is collecting the information on this form to work out if you can claim a Disability Allowance, and for managing payment of the Allowance if it is awarded. This is authorised by the Social Security Act 1991.

The Department of Social Security usually gives some or all of this information to:

- the Australian Taxation Office;
- the Department of Veterans' Affairs; and
- the Department of Community Services.

The Department of Community Services usually gives some of the information to State organisations responsible for health services.

Example 4: Personnel Information

The Public Works Department is collecting the information on this form to manage your employment with the Department. This is authorised by the Public Employment Act 1917.

The Public Works Department usually gives some or all of this information to:

- the Department of Finance; and
- the Australian Taxation Office.

If a different Commonwealth **agency** employs you in the future, this Department usually gives information from this form to the new employer

Information Privacy Principle 3

What is in these guidelines?

- Guideline 17** gives the text of IPP 3
Guideline 18 shows how IPP 3 relates to IPPs 7 and 8
Guideline 19 tells you what information is relevant, up to date and complete
Guideline 20 tells you how to only collect information that is relevant, up to date and complete
Guideline 21 tells you when a collection is intrusive
Guideline 22 talks about collecting information for law enforcement

17. What does IPP 3 say?

This is the text of IPP 3:

Where:

- a) a collector collects **personal information** for inclusion in a record or in a generally available publication; and
- b) the information is solicited by the collector;

the collector shall take such steps (if any) as are, in the circumstances, reasonable to ensure that, having regard to the purpose for which the information is collected:

- c) the information collected is relevant to that purpose and is up to date and complete; and
- d) the collection of the information does not intrude to an unreasonable extent upon the personal affairs of the individual concerned.

Meaning of IPP 3

IPP 3 says that an **agency asking for personal information** must:

- take reasonable steps to make sure that the information it collects is relevant, up to date and complete (see IPP 3(c)); and
- take reasonable steps to make sure that it does not collect information in an unreasonably intrusive way (see IPP 3(d)).

18. How does IPP 3 relate to IPPs 7 and 8?

IPP 3 says that an **agency** should take whatever steps are reasonable to make sure that **personal information** it **asks for** is relevant, up to date and complete.

Even though IPP 3 does not say **agencies** have to make sure that **personal information** they ask for is accurate, they should be careful. IPPs 7 and 8 say that **agencies** have to take reasonable steps to make sure that information they use, or hold in their records, is accurate.

Keeping records of personal information (IPP 7)

IPP 7 says that an **agency** should take whatever steps are reasonable to keep **personal information** in its records relevant, up to date, complete, accurate, and not misleading.

Using personal information (IPP 8)

IPP 8 says that an **agency** should only use **personal information** after it has taken whatever steps are reasonable to make sure it is accurate, up to date, and complete. The most complaints to the Privacy Commissioner are about **agencies** using **personal information** that they did not make sure was accurate.

19. How can I tell if personal information is relevant, up to date and complete?

An **agency** should have a specific purpose for collecting **personal information**. Information is only relevant if it helps the **agency** to achieve that purpose.

What information is relevant?

Information must have a specific purpose to be relevant

Usually, information is only relevant if the **agency** has a use for it at the time the **agency** collects it. An **agency** should not collect information just because it might be useful in the future.

A few **agencies** (for example, law enforcement **agencies**) gather general intelligence information. These **agencies** can ask for **personal information** even if they do not have an immediate use for it, if the information is relevant to their intelligence function.

To comply with IPP 3 an **agency** should only ask for **personal information** that will help it to achieve its purpose of collection.

This is similar in practice to the requirement under IPP 1 that **agencies** can only collect **personal information** that is necessary for or directly related to the purpose of collection.

The following practices may breach IPP 3:

- asking for irrelevant **personal information** (for example, by asking for information without a specific purpose)
- asking for information that it would be against the law to use
- asking a group of people for **personal information** when the **agency** only needs information about some of them
- unnecessarily recording information in a way that identifies the people it is about.

These practices are discussed in more detail in Guideline 4.

What information is up to date?

Agencies must take reasonable steps to make sure that the **personal information** they **ask for** is up to date. This depends partly upon the purpose that the **agency** will use the information for. Information may become inaccurate as time passes. Some types of information are more likely to go out of date than others.

For example: Information about a person's family circumstances or income is likely to change over time, while information about his or her date of birth will not change.

What information is complete?

Complete information gives a true picture of the facts and helps **agencies** to make correct decisions (for example, when providing benefits or services to people). Incomplete information is likely to mislead people.

For example: Police charge a person with a criminal offence. The person is found not guilty. If, after that, an **agency** only records that the person was charged, then its information is incomplete because people might think that the person is a criminal. If the **agency** records that the person was charged and that they were found not guilty, then its information is complete.

20. How can agencies make sure that they only collect personal information that is relevant, up to date and complete?

This guideline discusses ways that **agencies** can make sure that they only collect **personal information** that is relevant, up to date and complete; and so comply with IPP 3(c).

How can agencies make sure that they only ask for relevant information?

Personal information that an **agency** asks individuals or organisations for must relate to the **agency's** reason for asking.

An **agency** must make sure that its forms, interview methods, arrangements to regularly collect **personal information** from other organisations, and other ways of regularly collecting information, result in the **agency** collecting only relevant information.

Agencies sometimes arrange to collect **personal information** regularly from other organisations. If an **agency** starts or revises this sort of arrangement, then for each type of information it should:

- identify how that information helps achieve the purpose of collecting it; and
- ask “Can we achieve our purpose without this information?”

Otherwise, the **agency** may breach the IPPs.

When an **agency** designs or revises its forms or interview questions, it should identify how the **personal information** it asks for helps it achieve its purpose for collecting the information.

An **agency** must tell its staff how the IPPs limit the questions that they can ask. An **agency** can do this by training them or giving them written guidelines.

An **agency** must design its forms and interview questions so that they only ask for **personal information** that it needs. It can do this by asking trigger questions. This makes sure that people do not give an **agency** more information than it needs.

For example: An **agency** wants to use the same form for assessing applications for a benefit from sole parents and people with disabilities. The **agency** decides that to assess these applications, it needs to know the marital status of sole parents but not that of people with disabilities.

The **agency** should design its form like this:

- Q1** Are you applying for this benefit because you have a disability?
(if yes - go to question 4; if no - go to question 2)
- Q2** Are you applying for this pension because you are a sole parent?
(if yes - go to question 3; if no - go to question 4)
- Q3** Are you:
- married
- divorced?
- single?
- living in a de facto relationship?
- Q4** Are there any other reasons why you are applying for this benefit?

How can agencies make sure that their information is up to date and complete?

An **agency** should consider checking the **personal information** it collects to make sure that it is up to date and complete, especially if it thinks that it may be unreliable (for example, if it comes from an unreliable source, or it is not current).

An **agency** can check **personal information** by asking the person involved. The Privacy Commissioner especially recommends this when the information puts a person in bad light or disadvantages them. The person may have extra information that puts the **agency's** information into a different light.

If **personal information** is likely to go out of date (for example, addresses), **agencies** should record the date when they collect the information. This will help them decide later if they need to check the information before they use it (so that they do not breach IPP 8).

21. When is a collection intrusive?

When **agencies** collect **personal information**, they sometimes have to intrude into people's personal affairs. However, IPP 3(d) says that **agencies** must do their best to make sure that this intrusion is reasonable.

When is collecting personal information intrusive?

Collecting **personal information** will be intrusive if it involves:

- asking questions about sensitive personal affairs
- ways of collecting **personal information** that require physically touching people, observing their bodily functions, or that invade their private property
- repeatedly and unnecessarily asking for the same **personal information**.

Some ways that a collection could be intrusive are listed below.

An **agency** should think carefully before it uses an intrusive method of collecting **personal information**. It should decide whether or not to use an intrusive method of collecting information based on the importance of its purpose of collection and other circumstances.

IPP 1 also covers collecting **personal information** unfairly. Guidelines 6 and 7 tell you how an **agency** can avoid collecting unfairly.

What personal information is sensitive?

The sensitivity of **personal information** varies. An **agency** can work out how private **personal information** is likely to be by considering matters like:

- is this information available to the public?
- what codes of confidentiality bind professions that use this sort of information?
- does the person who gives the information think that it is sensitive?

Sensitive **personal information** may include information about a person's:

- medical history
- relationships
- sexual preferences
- personal finances
- political loyalty

- religious or philosophical beliefs.

What ways of collecting personal information are unreasonably intrusive?

Agencies are likely to intrude unreasonably on people's privacy if the **personal information** they try to collect is irrelevant or unnecessary. If the information is irrelevant or unnecessary, even a minor intrusion may be unreasonable (and the **agencies** risk breaching IPPs 1 and 3).

Whether an intrusive method of collecting **personal information** is likely to be reasonable depends on things like:

- whether the information is important to the **agency's** purpose of collection
- the importance of, and public interest in, the **agency's** purpose of collection
- the extent to which the **agency** intrudes on a person's privacy to collect the information
- whether the law specifically authorises the **agency** to use that method of collecting information
- whether people have a free choice in whether or not to provide the information - if they do it is much less likely to be unreasonably intrusive.

22. Collecting personal information for law enforcement

Law enforcement **agencies** such as the Australian Federal Police have their own guidelines on collecting, recording and using **personal information**. Their role is important to the public interest and they have special needs to gather intelligence information, so they have more freedom than other **agencies** when collecting information.

A law enforcement **agency** doesn't always have to know exactly what it will use **personal information** for when it collects it. It can collect **personal information** that is generally related to intelligence purposes, not just a specific purpose. However, it must have good grounds for believing that this kind of information will help it.

The Privacy Commissioner generally accepts that practices which comply with the internal rules of a law enforcement **agency** also comply with IPP 3, although the Commissioner reserves the right to find that a law enforcement **agency's** rules about collecting information are unlawful or unfair. The Privacy Commissioner chooses to follow the decisions of courts about the information collection practices of law enforcement **agencies**.